Supreme Court, U.S.
FILED

931749 APR 18 1994

OFFICE OF THE CLERK

NO.

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1993

WINFIELD D. SCHOOLCRAFT
Petitioner

versus

The State Of Utah
STAN SWEDIN; Social Worker.
JANE MARQUARDT; Guardian ad litm.
JOHN CRITTENDEN; Foster father.
COLLEEN CRITTENDEN; Foster mother.
The State of Utah was represented by
RICHARD PARMLEY; Weber County Attorney.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WINFIELD D. SCHOOLCRAFT
Petitioner
675 Green St.
Salt Lake City, Ut. 84102

phone (801) 537-1331

57 pp

QUESTIONS

1. Can paternal rights be taken away from a fictitious person and then claim that this negates the rights of a husband and presumed father?

2. Is it an invasion of marital privacy to order blood tests for paternity of a husband and presumed father when no family member is raising the question of paternity and there has been no finding of wrong doing on the part of the father?

3. Is it prejudice and unequal protection of the law when an influential family who is not a blood relation to the child is challenging a presumed father for custody of his son and the presumed father is the only one required to produce psychological evaluations and he is required to produce two evaluations, both good.

LIST OF PARTIES

JAN GRAHAM
Utah Attorney General
BRENT A. BURNET
Assistant Attorney General
120 north 200 west,
P.O. Box 1980,
Salt Lake City, Utah 84110

Attorneys for the State Of Utah and the following state employees;

STAN SWEDIN; Social Worker

JANE MARQUARDT; Guardian ad litm

JOHN CRITTENDEN; Foster father

COLLEEN CRITTENDEN; Foster mother

The State of Utah was represented by
RICHARD PARMLEY Weber County Attorney.

Robert K Hunt
past attorney for the foster parents.
635 25th Street
Ogden Utah 84401

TABLE OF CONTENTS

QUESTIONS	PAGE i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF EXHIBITS	iv
TABLE OF AUTHORITIES	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS	2
STATEMENT OF THE CASE	3
LIBERTY INTEREST	10
INVASION OF PRIVACY	11
DUE PROCESS DENIED	12
BIAS, DISCRIMINATION	16
UTAH HAS NOT CHANGED	17
QUOTE FROM JUDGE CRADLEBAUGH	18
FACTS	19
RULE 10 U.S. SUPREME COURT	20
CONCLUSION	22

APPENDIX

COURT OF APPEALS, TENTH CIRCUIT A.P.1

U.S. DISTRICT COURT A.P.8

PETITION, REMOVE PARENTAL RIGHTS A.P.11

MEMORANDUM DECISION, JUDGE MEWEY A.P.14

TABLE OF EXHIBITS

RECORD OF OBJECTION
Blood tests

COMPLAINT
For a declaration of rights

VALLEY TAN
Judge Cradlebaugh's letter

TRANSCRIPT OF PROCEEDINGS
February 14, 1991
Second District Juvenile Court

TABLE OF AUTHORITIES

Santosky v Kramer;
455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982), on remand to 89 A.D.2d 738, 453 N.Y.S.2d 942 (1982), appeal denied 58 N.Y.2d 605, 459 N.Y.S.2d 1929, 445 N.E.2d 656 (1983).

Utah Statute 78-3a-35; The offending sec. "The county attorney shall represent the state in any proceedings in a childs case."

Shelley v Kraemer (1948);
Under the 14th amendment, a state could not enforce, facilitate, encourage, or authorize private acts of discrimination. 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

Letter from Judge Cradlebaugh;
As printed in the Valley Tan Feb 22, 1860.

The People, etc, v. John D. Lee et al.;
"Mountain Meadows Massacre" Had taken place Sept. 1857. John D. Lee found Guilty Utah's Second district Court (1876) appealed to Utah Supreme Court, Judgement of lower court affirmed.

Michael H. v Gerald D.;
499 U.S. 110, 137, 109 S.Ct. 2333, 2349, 105 L.Ed.2d 91 (1989).

State in the Interest of J.W.F., 822 P.2d 1218 (Utah Ct. App. 1991), cert. denied, 832 P.2d 476 (Utah 1992); State in Interest of J.W.F., 799 P.2d 710 (Utah 1990); J.W.F. v. Schoolcraft, 763 P.2d 1217 (Utah Ct. App. 1988).

JURISDICTION

The ORDER AND JUDGMENT of the United States Court of Appeals tenth circuit was filed Feb. 07, 1994.

28 U.S.C.A. s 1254. Cases in the courts of appeals may be reviewed by the Supreme Court by the following method:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Winfield Schoolcraft is a resident of the State of Utah.

District Court Jurisdiction; 42 U.S.C. s 1983, On constitutional issues federal remedy under 1983 is supplementary to state remedy. Tovar v Billmeyer (1979, CA9 Idaho) 609 F2d 1291, later app (CA9 Idaho)

CONSTITUTIONAL PROVISIONS

The Due Process clause of the 14th amendment as the 14th apples to the following:

THE FIRST AMENDMENT; Freedom to raise ones child in the religion of choice.

FIFTH & SIXTH AMENDMENTS; Due process.

NINTH AMENDMENT; The right to marry and raise a family without the arbitrary intervention of a state government.

FOURTEENTH AMENDMENT; Equal protection of the laws.

STATEMENT OF THE CASE

1. Winfield D. Schoolcraft and Linda Schoolcraft, The Mother of J.W.F., were married on October 6, 1984 at Modesto California. They lived together seven months after their marriage, that was six months prior to the birth of J.W.F. on November 5th, 1985, in Ogden Utah. A short time after J.W.F. was born Linda abandoned him in Ogden. Winfield intercepted a letter from the Weber County branch of the Utah State Division of Family Services, in Ogden, to Linda, which was mailed to the California address. The letter informed Winfield of his son, and Winfield started making plans to bring his son home.

2. Stanley Swedin and Jane Marquardt, social worker and guardian ad litm, conspired together with John and Colleen Crittenden for the purpose of removing J.W.F. from the family of Winfield

Schoolcraft so that the Crittendens could adopt him. The Crittendens were appointed as foster parents for J.W.F. Richard Parmley Weber County Attorney was also involved in the conspiracy as attorney for the State Of Utah, with the authority of Utah statute 78-3a-35.

3. The new foster parents at the second Weber County Juvenile Court hearing in 1986, brought a large number of family in support of them becoming the adoptive parents. Yet they did not provide themselves with an attorney or the filing of any petitions until 1991.

4. Winfield attended that same Juvenile Court hearing with a good psychological evaluation that was ordered by the previous judge. But finding a new judge and the Crittenden family. Judge Robert L. Newey was hearing the case.

5. Jane Marquardt and Stan Swedin produced fabricated material as evidence.

They produced a fictitious natural father and named him Michael Ford. Richard Parmley as the attorney for the State of Utah filed a petition to remove the parental rights from Linda Schoolcraft and Michael Ford. Winfield Schoolcraft has never had a hearing as presumed father. (See Apendix page A.P.11)

6. A look at the first Juvenile Court Decision. (Appendix page A.P.14)

(a) Two blood tests for paternity were ordered of Winfield Schoolcraft as the first one did not satisfy the state employees, and the results of the approved blood test is probably just as fraudulant as the fabricated Michael Ford. Paragraph ten says that because of the blood tests Winfield is not J.W.F.'s father.

(b) Paragraph two of Judge Newey's Decision in the District Juvenile Court shows state employees trying

to convince the court that Linda is still married in past marriages. This fraud is recognized as not supported by evidence by the court.

(c) Paragraph eight indicates that Michael Ford came about as hearsay from Mr Swedin. (no supporting evidence has ever been submitted).

(d) This hearing was confused with much fraudulant material and the husband and presumed father has never had a hearing as presumed father. The marriage ended in divorce two years after J.W.F. was born.

(e) Paragraph eleven discusses J.W.F.'s multiracial ancestry and mentions that "Winfield Schoolcraft appears to have fair complexion and of Anglo Saxon ancestry." Paragraph five had testimony that Linda had fair complexion. Winfield submitted

photographs showing that Linda was not extremely fair and that she had black curly hair like J.W.F..

(f) This decision was based primarily on material not supported by evidence.

(g) The confusion is evident; Paragraph one states the fact that Winfield and Linda were married October 1984. Paragraph three says that Winfield testified that Linda left him in the summer of 1984, this would have to be prior to the marriage that took place in the fall of that year. I Winfield Schoolcraft do testify that Linda was there for her wedding.

(h) I Winfield Schoolcraft will testify that hearing all the false testimony, being ordered to comply with the inappropriate orders for blood tests, and having the

Crittenden family give that second Juvenile Court hearing the atmosphere of a town hall meeting without physical discipline, had created a situation for me of extreme duress.

7. The case was taken to the Utah Court of Appeals by Winfield's Attorney Richard Jones. "J.W.F. v SCHOOLCRAFT" 763 P.2d 1217 (Utah App. 1988). Winfield was found to have no rights to custody. However, Jane Marquardt's beating the drum of Michael Ford has filled the above court record with the unsubstantiated matter.

8. Eight years of due diligence on the part of Winfield Schoolcraft has produced the following citations; State in Interest of J.W.F., 822 P.2d 1218 (Utah Ct. App. 1991), cert. denied, 832 P.2d 476 (Utah 1992); State in Interest of J.W.F., 799 P.2d 710 (Utah 1990).

9. The foster parents are of the Mormon faith. John Crittenden's father is in the Mormon Church government at the stake level. Richard Jones is also of the Mormon faith which prevented him from making a case against the fraud and deception that was taking place on behalf of the influential Crittenden family.

10. In the Juvenile Court for Weber County, February 14, 1991, before Judge Stephen A. VanDyke; The Utah Supreme Court had remanded the case back to the lower court.

(a) On page 180 & 181 of the transcript John Crittenden testifies that in Judge Newey's Court, year 1986, a lot of his family went to show an interest in J.W.F..

(b) On page 216, 217, & 218 Stanley Swedin States his awareness of the Crittenden family interest in J.W.F..

LIBERTY INTEREST
The States Involvement

1. The state action becomes an issue:

(a) When a plaintiff alleges that a private person or entity has committed a constitutional violation.

(b) Then, the question is whether the private person's actions constitute a "State Action" as proscribed by constitutional provision. 14th amendment.

2. The State of Utah provided the mantle of authority that enhanced the power of the harm causing private entities. The state created the legal framework governing the conduct of Mr Parmley, Mr Swedin, Ms Marquardt, and the foster parents.

3. The state had delegated the authority for Mr Parmley, Mr Swedin, Ms Marquardt, and the foster parents to act.

4. The state employees have knowingly accepted the benefit derived from this

unconstitutional behavior and the state employees have allowed the foster parents to adopt my son (J.W.F.).

5. Because of the fabrication of a fraudulently produced natural father; An entity that can not testify or take a blood test; An entity that does not exist; The plaintiff has been denied the ability to exercise fundamental constitutional rights. The right to raise ones family without the arbitrary actions of the state.

INVASION OF PRIVACY

1. The right of privacy is considered a liberty protected by the 14th amendments Due Process Clause.

2. The privacy rights violated here are those to do with marriage, reproduction, and family, with a major attack on the privacy rights that surround the subject of procreation.

3. The defendants alleged a fabricated entity to be the natural father of the son born to the wife of Winfield Schoolcraft.

4. It was then claimed that this provided probable cause to order blood tests for paternity of the husband and presumed father. Winfield Schoolcraft objected, but under duress, submitted to the order of the court.

5. Two blood tests were ordered of Winfield Schoolcraft as the first blood tests did not satisfy the defendants.

6. The result of the invasion of the privacy of this marriage relationship, in all probability, is cut from the same cloth as the fabricated and fictitious natural father.

DUE PROCESS DENIED

The state can not deprive without due process and equal protection of the law.

PROCEDURAL DUE PROCESS:

1. The petitioner has been deprived of his liberty interest, the interest of maintaining his benefits and obligations as presumed father. The right traditionally accorded the legal husband of the child's mother. State employees have successfully kept the case of Michael Ford in front of the courts of Utah, and the case of Winfield Schoolcraft the presumed father has never been heard.

3. The fictitious Michael Ford does not exist in any way except as a tool to be used to defraud the petitioner of his most fundamental rights and obligations as they pertain to his family.

4. The family of Winfield Schoolcraft has suffered enormous deprivation. The family is not only deprived of the joy of raising a son, but the family as a whole has suffered the loss of an heir.

5. Parental status is not terminated by perpetrating a fraud. Parental status can be terminated by a finding of unfitness, and unfitness must be proven by clear and convincing evidence. Santosky v Kramer.

6. Winfield Schoolcraft has never been found to be unfit.

SUBSTANTIVE DUE PROCESS:

1. The rights that the plaintiff and his family have suffered the loss of are fundamental. Therefore; The state statute must pass the "strict scrutiny" test.

2. A substantive due process problem arises when a governmental action intrudes on a right.

3. The fundamental rights here deprived are;

(a) The right to privacy in marriage, procreation, raising children,

and family interests. And

(b) The right to marriage, procreation, raising children, and family interests. Also

(c) Freedom of religion as pertains to the raising of the child.

4. The problem with vague laws are problems of substantive due process. The State of Utah statute 78-3a-35 that appointed Weber County attorney Richard A Parmley to represent the states interest is one of those vague laws. As it seems; The states interest is without expressed definition.

5. The statute 78-3a-35 may be facially neutral, but it can be unequally administered.

6. The "states interest" is The State of Utah's interest. A Guardian ad litm was assigned for the interest of the child.

7. The state statute does not pass the strict scrutiny test.

BIAS, DISCRIMINATION

1. Shelley v Kraemer (1948) under the 14th amendment, a state court could not enforce, facilitate, encourage, or authorize private acts of discrimination.

2. People should be treated alike under like circumstances. And these are not even like circumstances; Two court ordered psychological evaluations for Winfield Schoolcraft, both were good, and no psychological evaluations required for the adoptive parents (foster parents).

3. I have shown in the foregoing sections that the actions violating the rights of the plaintiff and his family have met the qualifications as a state action.

4. The state has created a distinction in the age of Winfield Schoolcraft and used it as a prejudice in favor of the younger foster parents. This can be scene

in the Weber County Juvenile Court decision February 1991.

5. It is apparent by the states effort to support the action that the action is an intentional act of discrimination.

6. The only legitimate state interest should be one of civil rights when there is no reason to deprive a child of his true family.

7. The state employees allowed a little innocuous age discrimination to appear in print; And what better way to cover up the real motives of the defendants.

UTAH HAS NOT CHANGED

This case is evidence of blatant activity and the lengths to which Mormon officials are still willing to go to meet the desires of an influential Mormon family. The foster father is the son of a man in Mormon church government at the stake level. And Winfield Schoolcraft is not a Mormon.

QUOTE FROM JUDGE CRADLEBAUGH

1. I have submitted a copy of Judge Cradlebaugh's letter as published in the newspaper from Salt Lake City called the VALLEY TAN, February 22, 1860.

2. Quoting item 5 from that letter:

> "5th. That they teach the doctrine that it is right and godly that Mormons should rob Gentiles whenever they can do so with facility and escape public exposure. The Mountain Meadows Massacre is a melancholy proof of this fact."

Those who were not Mormons were called Gentiles by those who lived in Utah.

3. It took 19 years to bring only one member of the gang that massacred the wagon train from Arkansas at Mountain Meadows to justice. And this was done because Judge Cradlebaugh, Federal Investigators, and the U.S. Army applied due diligence and political pressure on the State Of Utah.

4. This case that is before you today

has the same problem that the Mountain Meadows case had.

(a) When Mormons rob nonmormons they do it with facility and escape public exposure.

(b) When Utah public officials and the Utah Court System hear the truth against Mormons they ignore it.

I have been fighting for my son for over eight years.

FACTS

1. The alleged natural father of J.W.F. is a fraud.

2. Two court ordered psychological evaluations for Winfield Schoolcraft, the second psychological evaluation was ordered in 1991 for the February 14th hearing, and none for the adoptive parents is the result of prejudice; And the unequal protection of Utah law.

3. Two court ordered blood tests of the

presumed father was a means to further the overall fraud.

4. Two court ordered blood tests of the presumed father was an unnecessary invasion of marital privacy.

5. No lawful reason has ever been given by the state employees why J.W.F. should be deprived of his true family and knowledge of blood relatives.

6. The only reason for all of the above activity is so that an influential Mormon family could adopt a child.

RULE 10 U.S. SUPREME COURT

1. The Supreme Court in Michael H. v Gerald D. upheld a statute that established a presumption that a child born to a married woman was the child of the woman's husband. This Presumption of legitimacy could be rebutted only in limited circumstances by the parties to the marriage; It could not be rebutted by a man who wished to establish that he was

the father of the child born to a woman who was married to another man.

2. In this case of Winfield Schoolcraft v The State of Utah it is the State employees that is making the challenge; No family member is involved in this challenge at all.

3. The Order and Judgment of the United States Court of appeals for the tenth circuit is in conflict with the Michael H. v Gerald D. decision of the U.S. Supreme Court.

4. In Michael H., some of the Justices thought that a man not the husband could ask for visitation and to establish a relationship with the child. However, a majority of Justices on the Court ruled that a male has no right to a hearing to determine whether he should be declared the father of a child who was born to a woman who was married to another person.

5. In this present case and according to the precedent of Michael H. v Gerald D.; The State employee's natural father of J.W.F., even if he was not a fictitious entity, would not have a right to a hearing to be declared the father.

CONCLUSION

1. The court of appeals has expressed the idea that s 78-3a-35 of the Utah Code was providing J.W.F. with an attorney. However, the attorney for J.W.F. was Jane Marquardt. The statute meant what it said; The statute appointed an attorney to represent the state.

2. The employees of the state acted under color of state law; Without the positions that they held they could not have removed J.W.F. from one family and placed him with another. The Crittendens were employed as foster parents, they knew what was going on from the beginning as John Crittenden testified in the Feb.

14th, 1991 hearing, transcript pages 180 and 181. The Crittendens were not alone in this, Transcript pages 216, 217, & 218 shows Stanley Swedin as actively involved in the situation.

3. I and my family have suffered a loss. We have lost the services of J.W.F. The many joys that a son can bring, and the fact that he would be an heir. My family owns property, my brother has no children of his own.

4. There is much in history about Mormons in conflict with nonmormons. The Court of appeals said that I have failed to establish that I am a member of a protected class. This case is proof that Mormons are active against nonmormons in this area of family law. Myself, and others who will come forward with this case as precedent, need to be protected.

5. The Court of Appeals said that I was asking for too much. If that is the case

I should not receive all that I was asking for. However I should receive at least this one consideration; A hearing as presumed father. Michael Ford has never had a blood test to establish him as having anything to do with J.W.F at all. The state employees have not even established his existence. And he should not stand in the way of a husband and presumed father having a hearing for the custody of his son. If the state of Utah wants all the court cases to stand on behalf the idea that employees can produce such an entity so that they can give him rights to take away, then let the cases stand to that extent. But, they should not withstand the rights of, as I was, husband and presumed father. Nothing less would be justice.

Dated this 29 day of April 1994.

Winfield D. Schoolcraft

Winfield D. Schoolcraft

FEB 07 1994

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

WINFIELD DUANE SCHOOLCRAFT	)	
	)	
Plaintiff-Appellant	)	
	)	
v.	)	NO. 93-4103
	)	(D.C. NO.
STATE OF UTAH,	)	92-CV-114-G)
JOHN CRITTENDEN,	)	(D. Utah)
COLLEEN CRITTENDEN,	)	
STANLEY SWEDIN,	)	
JANE MARQUARDT,	)	
	)	
Defendants-Appellees	)	

ORDER AND JUDGEMENT

Before TACHA, BALDOCK, and KELLY,

Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34.1.9. The case is therefore ordered submitted without oral argument. This is an appeal from the district

court's grant of defendant's motion to dismiss. We exercise jurisdiction pursuant to 28 U.S.C. s 1291, dismiss part of Mr. Schoolcraft's claim for lack of jurisdiction and affirm the remaining portion of the district court's order.

---

* This order and judgement is not-binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. the court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may cited under the terms and conditions of the court's General Order filed November 22, 1993. __F.R.D.__.

I. FACTS

Winfield Duane Schoolcraft began this litigating in Utah state court to determine the extent of his parental rights in a child, J.W.F. Mr Schoolcraft alleges he was the father of the child, but the Utah state courts determined that Mr. Schoolcraft was not the father of J.W.F.[1]

Mr. Schoolcraft filed this action against the state of Utah; Stanley Swedin, a social worker employed by the state of Utah; John and Colleen Crittenden, The adoptive parents of J.W.F.; And Jane Marquardt, guardian ad litm of J.W.F. in the state proceedings. Mr. Schoolcraft alleges that the defendants violated his constitutional rights by the manner in which they permitted the Crittendens to adopt J.W.F. the federal district court granted defendants' motion to dismiss.

II. DISCUSSION

In federal court , Mr. Schoolcraft sought relief to "set aside all prior Utah State Court decisions"; to find Utah Code Ann. s 78-3a-35 unconstitutional; and to remedy alleged constitutional deprivations under 42 U.S.C. s 1983. We review the dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) de nova,

applying the same scrutiny to the complaint as did the trial court. Ayala v. Joy Mfg. Co., 877 F.2d 846,847 (10th cir. 1989).

---

1 See State in Interest of J.W.F., 822 P.2d 1218 (Utah Ct. App. 1991), Cert. denied, 832 P.2d 476 (Utah 1992); State in Interest of J.W.F., 799 P.2d 710 (Utah 1990); J.W.F. v. Schoolcraft, 763 P.2d 1217 (Utah Ct App. 1988).

To the extent Mr. Schoolcraft sought to have the federal district court set aside the Utah state court judgements, the district court lacked jurisdiction to grant that relief. Federal district courts do not have Jurisdiction over challenges to state court decisions in cases arising out of judicial proceedings, even if those challenges allege that the state court's action was unconstitutional. See District of Columbia Court Of Appeals v. Feldman, 460 U.S. 462,486 (1983). Any request for

federal review of the state court judgment, in this case, must be addressed directly to the United States Supreme Court pursuant to 28 U.S.C. s 1257. Facio v. Jones, 929 F.2d 541, 543 (10th Cir. 1991).

Mr Schoolcraft further asserts that Utah Code Ann. s 78-3a- 35(3), which provides "[t]he county attorney shall represent the state in any proceedings in a child's case' in juvenile court violates his right to equal protection under the Fourteenth Amendment. Mr. Schoolcraft's claim is based on the idea that he somehow experienced discrimination because the state of Utah provided J.W.F. an attorney in a proceeding to determine the scope of parental rights.

However, Mr. Schoolcraft meets none of the requirements for a valid equal protection claim. He alleges no

restriction or violation of a fundamental constitutional right, Ruark v. Solano, 928 F.2d 947, 949 (10th Cir.. 1991), and he fails to demonstrate how the defendants intentionally or purposefully discriminated against him. General Bldg. Contractors Ass'n v. Pennsylvania, 458 U.S. 375,391 (1982). Moreover, he fails to establish that he is a member of a protected class or that he is a member of a class that is being treated differently than another class in such a manner as to result in a constitutional deprivation. Buckley Constr., Inc. v. Shawnee Civic & Cultural Dev. Auth., 933 F.2d 853, 859 (10th Cir. 1991). Mr. Schoolcraft's Equal protection claim is without Merit.

Finally, Mr. Schoolcraft asserts that he has suffered an injury addressable by 42 U.S.C. s 1983. Mr Schoolcraft's claim against the state of Utah is Barred by the Eleventh Amendment.

To state a cause of action against the remaining defendants under s 1983, Mr. Schoolcraft must show two things: (1) That the defendants acted under color of state law and (2) that the plaintiff suffered a constitutional harm. Ouezda v. County of Bernalillo, 944 F.2d 710, 714 (10th Cir. 1991). Mr. Schoolcraft has failed to satisfy either requirement to state a claim under s 1983. We find Mr. Schoolcraft's remaining arguments are without merit.

We dismiss Mr. Schoolcraft's claim to overturn the Utah state proceedings for lack of Jurisdiction and AFFIRM the district court's order on all other claims. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

MAY 24 1993

A.P.8

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

WINFIELD DUANE SCHOOLCRAFT	)	ORDER
	)	
Plaintiff	)	
	)	Civil No.
vs.	)	92NC114G
	)	
THE STATE OF UTAH AND;	)	
Entities listed below,	)	
	)	
Defendants.	)	

THIS MATTER CAME ON REGULARLY for hearing on the 13th day of May, 1993 before the Honorable J. Thomas Green, Judge of the above entitled Court on the Defendants' Motion to Dismiss. The Plaintiff Winfield Duane Schoolcraft was personally present in Court and representing himself pro se, The Defendant State of Utah was represented by Assistant Attorney General John P. Soltis and John and Colleen Crittenden

were represented by Robert Hunt, Esq. The Court having reviewed all of the pleadings on file and having heard argument from Plaintiff and defense counsel now makes and enters the following order:

IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. The Plaintiff's Amended Complaint and all causes of action contained therein against the Defendants State of Utah, et al. and John and Colleen Crittenden are dismissed with prejudice for the following reasons:

a. That plaintiff fails to state claim upon which relief can be granted,

b. That plaintiff's action is barred by the statute of limitations contained in U.C.A. s 78-12-28(3), and

c. That plaintiff's action is barred by the doctrine of Res Judicata.

A.P.10

DATED this 24th day of May, 1993.

BY THE COURT

_____

JUDGE J. THOMAS GREENE

United States District Court

Filed 5 September 1986 A.P.11

JUVENILE COURT

WEBER PETITION

STATE OF UTAH IN THE INTEREST OF (J.W.F.)

CASE NUMBER 717256

A PERSON UNDER 18 YEARS OF AGE

BIRTHDAY 11-5-85

THE PARENTS, GUARDIAN, CUSTODIAN OR RELATIVES ARE:

MICHAEL FORD, FATHER UNKNOWN

LINDA J. SCHOOLCRAFT, MOTHER UNKNOWN

PETITIONER BEING DULY SWORN, ALLEGES ON INFORMATION AND BELIEF THAT THE NAME AND ADDRESS OF THE PARENT, GUARDIAN, CUSTODIAN OR NEAREST KNOWN RELATIVES OF THE ABOVE NAMED MINOR PERSON ARE AS SET FORTH ABOVE AND THAT SAID MINOR PERSON IS WITHIN THE PROVISION OF SECTION 78-3A-48(5), OF THE UTAH CODE ANNOTATED AS AMENDED, BECAUSE:

COMES NOW THE STATE OF UTAH BY AND THROUGH RICHARD A. PARMLEY, DEPUTY WEBER COUNTY ATTORNEY, PURSUANT TO 78-3A-48,

1953, AS AMENDED, AND HEREBY MOVES THE COURT TO TERMINATE ALL THE PARENTAL RIGHTS OF MICHAEL FORD AND ALL THE PARENTAL RIGHTS OF LINDA SCHOOLCRAFT.

THIS MOTION IS MADE ON THE GROUNDS AND FOR THE REASON AS FOLLOWS:

1. THAT MICHAEL FORD AND LINDA SCHOOLCRAFT ARE UNFIT OR INCOMPETENT BY REASON OF CONDUCT OR CONDITION WHICH IS SERIOUSLY DETRIMENTAL TO THE CHILD; AND/OR

2. THAT MICHAEL FORD AND LINDA SCHOOLCRAFT HAVE ABANDONED SAID CHILD, AND/OR

3. THAT MICHAEL FORD AND LINDA SCHOOLCRAFT HAVE FAILED TO COMMUNICATE VIA MAIL, TELEPHONE, OR OTHERWISE FOR ONE YEAR WITH SAID CHILD OR HAVE NOT SHOWN THE NORMAL INTEREST OF NATURAL PARENTS, WITHOUT JUST CAUSE.

WHEREFORE, PETITIONER RESPECTFULLY

REQUESTS THAT THIS MATTER BE BROUGHT BEFORE THE COURT FOR PROCEEDINGS IN ACCORDANCE WITH THE LAW.

Sgned by Richard Parmley

PETITIONER

SUBSCRIBED AND SWORN TO THIS 5th DAY OF SEPTEMBER 1986.

Signed

DEPUTY COURT CLERK.

Filed 11 March, 1987 A.P.14

IN THE DISTRICT JUVENILE COURT

FOR WEBER COUNTY

STATE OF UTAH, in the intrest of J.W.F.	MEMORANDUM DECISION
A person under eighteen years of age.	Case No. 717256

1. That Winfield Schoolcraft married Linda Jan Finney, the mother of J.W.F. at Keyes, Stanislaus County, California on October 6, 1984, as testified to by Mr. Schoolcraft and as evidenced by exhibit "A". That this was Linda Finney's fifth marriage, as attested to by the mother in said Certificate of Registry of Marriage, exhibit "A". That no decree of divorce has been obtained to this marriage.

2. That the states and guardian ad litems contention that Linda Finney had four prior marriages and had abandoned

one or more prior husbands without obtaining a legal divorce and thus the marriage between Mr. Winfield Schoolcraft and Linda Finney is void, Is not supported by any evidence presented to the court.

3. That Linda Finney left Mr. Winfield Schoolcraft in the State of California at least seven months prior to the birth of J.W.F. and Mr. Winfield Schoolcraft was not aware that Linda Finney was, in fact, expecting a baby when she left him. Mr. Winfield Schoolcraft Testified that Linda Finney left him the summer of 1984 approaching fall, which would be more than one year before the birth of J.W.F. which the court finds to be the fact.

4. Mr. Winfield Schoolcraft first learned of the birth of J.W.F. when a letter by certified mail addressed to Linda Schoolcraft at her parents address

in the State of Idaho, giving notice of the termination of her parental rights was forwarded and opened by Winfield Schoolcraft as testified by Mr Schoolcraft,

5. Linda Schoolcraft came to the State of Utah after leaving Winfield Schoolcraft in California. That she met Lewis Price at the Corner Bar on 25th Street in Ogden, Utah. Mr. Lewis Price considered himself to be her boyfriend and had known her for approximately six months prior to December 5, 1985. Lewis Price last saw Linda Schoolcraft in the lobby of the Marion Hotel which is located at 25th Street and Lincoln Avenue, Ogden, Utah on December 5, 1985, when she told him she was going to "hop a train" to Nevada. Lewis Price Testified that Linda Schoolcraft had been living at a home with a Don Brubaker. That Linda Schoolcraft was not married during the

period she was living at the home of Don Brubaker. Lewis Price knew Linda was pregnant with J.W.F. during the period of time that he knew her. That she never represented to him who was the father of J.W.F.. Lewis Price testified that Linda Schoolcraft had a Fair complexion.

6. On December 6, 1985 Don brubaker advised Lewis Price that Linda had left J.W.F. with him and wanted to know what to do. Mr Lewis Price advised Don Brubaker to call the police, whereupon the Division of Family Services for the State of Utah took J.W.F. into shelter care and said child has been in the custody of the Utah State Division of Family Services at all times since December 6, 1985.

7. That Mr. Stan Swedin of the Utah Division of Family Services has made due and diligent efforts to locate Linda Schoolcraft and these efforts have

failed. At no times since Linda Schoolcraft left said child on December 5, 1985 has she had any contact with J.W.F. or the Division of Family Services.

8. That Linda Schoolcraft advised Mr. Swedin that a Michael Ford was the father of J.W.F. on her application for Public Assistance.

9. J.W.F. was born November 5, 1985 at the St. Benedict's Hospital, Ogden Utah. His birth certificate lists mother as Linda Jan Schoolcraft, date of birth March 7, 1952, age 33, state of birth, Idaho. Linda Schoolcraft did not list the name, address, or any information of the father of said child on said birth certificate.

10. That blood samples were drawn from J.W.F. on December 1, 1986 and from Winfield Schoolcraft on December 17, 1986 at the University of Utah Medical Center

Tissue Typing Laboratory. That the Human Leucocyte Antigin (HLA) tests were performed on the blood of J.W.F. and Winfield Schoolcraft. After a comparison of the white blood cells. it was the opinion of Dr. Charles DeWitt, that it is scientifically impossible for Winfield Schoolcraft to be the father of J.W.F. and the court finds that Winfield Schoolcraft is not the biological father of J.W.F..

11. From the personal appearance of J.W.F. and Winfield Schoolcraft in court and as evidence in the photograph taken at the time of drawing a blood sample for the HLA test (exhibit #2) J.W.F. appears to be of Negro ancestry and Winfield Schoolcraft appears to have fair complexion and of Anglo-Saxton ancestry.

12. That the mother of J.W.F. has at all times since December 6, 1985, abandoned J.W.F. and he should be placed

in the permanent custody of the Utah State Division of Family Services for the purpose of finding a suitable adoptive home.

13. Section 78-25-18 UCA provides in any civil action or in bastardy proceedings in which the parentage of a person is a relevant fact, the court shall order the child and alleged parents to submit to blood tests. Winfield Schoolcraft has entered his appearance in the above proceedings claiming to be the father of J.W.F. and demanding custody of said child even though the mother of said childs parental rights were terminated. Section 78-45A-7 UCA which provides in part that "the court upon its own initiative or upon suggestions made by or on behalf of any person whose blood is involved.... shall order the mother, child and alleged father to submit to blood test. Pursuant to said statutes the

court ordered HLA tests be made upon the white blood cells of J.W.F. and Winfield Schoolcraft to determine if Winfield Schoolcraft was J.W.F.'s father and if custody of said child should be placed with Winfield Schoolcraft. The court further finds that the state will incur lengthy and expensive proceedings and require home evaluations in the state of California and Oregon, witnesses subpoenaed from said states to determine whether Winfield Schoolcraft is a fit and proper person to have custody of said child.

14. Section 78-45A-1 Uniform Act on Paternity provides in part as follows: ...."a child born out of wedlock includes a child born to a married woman by a man other than her husband." The court finds that J.W.F. was born out of wedlock. That Linda Jan Schoolcraft was a married woman and J.W.F. was born to her by a man other

than Winfield Schoolcraft her husband.

The court finds that it was the intent of the legislature that Section 78-45A-1 UCA to take precedent and is controlling in the factual case at hand over Section 30-1-17-2 UCA which was inacted as part of the Statute on marriage and divorce.

15. The court finds beyond a reasonable doubt that Winfield Schoolcraft is not the father of J.W.F., that Section 78-45A-7 UCA, the Uniform Paternity Act takes precedence over Section 30-1-17 UCA which provides that J.W.F. shall be deemed to be the legitimate child of both Linda Schoolcraft and Winfield Schoolcraft. The ability to scientifically determine the father of a child or as in this case to exclude purported fathers of children has advanced both scientifically and by court acceptance nationally as well as in Utah

even since Phillips et al v. Jackson (1980) 615 P2d 1228, where the court held "We conclude that section 78-45(a)-10 does not preclude the admissibility of HLA tests if they otherwise meet the relevant legal standards for the admission of scientific evidence."

16. Section 78-30-12 provides only a natural father can "adopt" an illegitimate child by acknowledgment pursuant to this section and thereby become obligated to support the child - Mace v. Webb- 1980 614 P2d 647. Section 78-30-12, Adoption by acknowledgment, does not apply to this case because Mr. Schoolcraft has never "received it as his own with the consent of his wife, if he is married into his family and otherwise treating it as if it were a legitimate child." In fact, he was unaware that his wife, Linda, if in fact she was his legal wife, was pregnant or gave birth to a

baby until after his wife's notice of termination of parental rights were forwarded and opened by him.

17. The court finds Mr. Winfield Schoolcraft is not the "natural" or biological father of J.W.F. and that J.W.F. is not an "illegitimate" child in that he was born during the marriage of Linda Schoolcraft and Winfield Schoolcraft. That Section 30-1-17 UCA is not controlling. The Presumption that a child born to a married woman is the offspring of her husband and legitimate is applied where the child is conceived out of wedlock. Rodes v. Rodes (82) Utah 645 P2d 761. In Holden vs. Holden supra, the court observed the standard set out by Judge Cordoza "what is meant by these pronouncements....that the presumption will not fail unless common sense and reason are outraged by holding that it abides." And followed the familiar and

practical rule that the presumption of legitimacy will prevail unless the contrary is proved beyond a reasonable doubt.

18. The court in the case at hand finds beyond a reasonable doubt that Winfield Schoolcraft, is not the father of J.W.F. and further finds based upon the scientific medical evidence that it is impossible for him to be the father of J.W.F..

19. The court is mindful of In The Interest of Baby Girl M. appeal of James N. Thomas 476 P2d 1013 in which the court held the father of an illigitimate child who had public acknowledged it as his child has legal rights to care, custody and control of his child assuming he is a fit and proper person, and the natural mother is deprived of her parental rights.

20. This court distinguishes the

case of J.W.F. from the above case in that Winfield Schoolcraft has been afforded due process of law and hearings to determine if in fact he is the father of J.W.F.. Furthermore, since the above cases were ruled upon the scientific determination of a childs father has been advanced through the use of (HLA tests) tissue testing and comparisons. No longer do the medical experts and the courts have to soley rely upon the ABO Blood Type testing to determine or exclude a purported father. Because of the organ transplant experimentation which has taken place at the University of Utah, the tissue testing laboratory under the direction of Dr. Chrles DeWitt who testified before the court, is locally available to scientifically determine with absolute certainty if a man is not the father of a child and to determine with a very high probability if a man is

the father of a child. Based upon the foregoing evidence, the court makes the following:

CONCLUSIONS OF LAW

1. That Winfield Schoolcraft is not the father of J.W.F. and has no legal rights as the father to custody of said child. That J.W.F. is hereby placed in the custody of the Utah State Division of Family Services for placement in a foster home for the purpose of finding suitable adoptive parents for J.W.F.; with a permanency plan for the permanent placement and adoption of said child.

This case is set for further hearing to determine if the guardian ad litem of J.W.F., the Attorney for Winfield Schoolcraft and the state, desire to present further evidence to the court concerning Winfield Schoolcraft's ability to care for said child and to determine if he is a fit and proper person to have

custody of said child and to determine if it is in the best interest and for the protection of said child to be removed from the temporary custody of the Utah State Division of Family Services for the reasons stated above and to be placed in the custody of Winfield Schoolcraft.

Dated this 10th day of February, 1987

BY THE COURT

_____

Robert L. Newey, Judge